GAHC040007372024

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
(ITANAGAR BENCH)

Case No. : BA/60/2024

Smti Neelam Yapi
Age: 38
Occupation :
Address:Wife of Shri Neelam Mangha
resident of Rakap Colony
PO and PS Naharlagun
Papumpare District
Arunachal Pradesh

VERSUS

The State of AP and Anr
Age: 0
Occupation :
Address:through the PP of AP
2:Advocate Taba Zim
Age: 0
Occupation :
Address:Chairperson Child Welfare Committee
Itanagar Capital Complex
(CWC
ICC)

Advocate for : T T Tara
Advocate for : P P of AP appearing for The State of AP and Anr: Advocate , appearing for 2, respectively.

BEFORE
HONBLE MR. JUSTICE BUDI HABUNG

ORDER

Date : 18.07.2024

Heard Mr. T. T. Tara, learned counsel for the petitioner. Also heard Ms. L. Hage, learned Additional Public Prosecutor for the State respondent No. 1 and Ms. S. V. Daring, learned Legal Aid Counsel for the informant/respondent No.2.

2. This is a bail application filed under Section 439 of Cr.P.C, 1973, praying for release of the accused, namely, **Shri Neelam Mangha** on bail who has been arrested in connection with Itanagar W.P.S. Case No. 20/2024 under Section 373 of IPC R/w Sec. 6/8/12 of POCSO Act, 2012 and sections 3/4/5 & 6 of Immoral Trafficking Act, 1956.

3. The case of the petitioner is that on 03.05.2024 one Taba Zim, Chairperson CWC, ICC, Itanagar lodged a written FIR before the Officer-In-Charge, Women Police Station, Itanagar, inter alia, alleging therein that on 03.05.2024 at about 07:16 PM she received a call from police personnel from Women Police Station, Itanagar and informed her that they had rescued 3(three) minor girls Miss X1, X2 & X3 (name concealed) aged about 8, 10 & 16 respectively while conducting prostitute racket at Chimpu, Itanagar and arrested 2(two) persons who were involved in child prostitution. Thereupon, she along

with the other member rushed and reached at Women P.S. and provided counselling too those minor girls. After counselling, it was revealed that one Miss Tutum Milli @ Tutu Milli brought 2(two) victims from their native village Boikantopur, Assam for household work, but later on they were forced to do sexual intercourse/child prostitution by Miss Tutum Milli @ Tutu Milli. The FIR further stated that as per the statement of one victim Ms. "X3" she was kept at Ms. Tutum Milli @ Tutu Milli and working at one Smti Purnima at Itanagar and Miss "X2" was first kept at Puja Milli, but later on she was placed at Miss Tutum Milli @ Tutu Milli. They were forced to do child prostitution on daily basis. And when they refused to do the same, they were physically assaulted by giving punches, hit with sticks and stop giving them any food for a day and because of fear, they did not disclose the incident with their parents. Further, Miss Tutum Milli @ Tutu Milli threatened them with dire consequences, if they ever try to run away or disclose to anyone. Whereas, Ms. "X1" is unable to give any statement but accepted that she was brought with her father to WPS, Itanagar. Thus, it was reveled that the minors were forced to do prostitution by Miss Tutum Milli @ Tutu Milli, hence, requested for registration of case.

4. On receipt of the said written FIR, a case was registered being Itanagar W.P.S. Case No. 20/2024 U/S 373 of IPC R/w Sections 6/8/12 of POCSO Act, 2012 and U/S 3/4/5 & 6 of Immoral Trafficking Act, 1956. And upon registration, an investigation was launched and arrested the alleged accused on 14.05.2024.

5. The learned counsel for the petitioner submits that the accused was

arrested on the ground that investigation has established communication with the various pimps to procure the minor girls and had gone on to do sexually assault them in the rented rooms of the pimps. The learned counsel further submits that the accused person is not named in the FIR and was not apprehended from the place of occurrence by the I.O of the case but have caused him arrested on the basis of the online monetary transaction with Ms. Pushpanjali Milli, who is known to the accused person since 2020 and she runs a parlor at Itanagar.

6. The further submission of the learned counsel for the petitioner is that the accused person is innocent, however, he has been falsely implicated and arrested in the case merely on the ground that there exists a financial transaction between the alleged accused and Ms. Pushpanjali Milli. However, the said monetary transaction with her involved the payment to the father of Ms. Pushpanjali Milli Shri Karna Milli being a price of local medicine for diabetics, sugar and hypertension through her account as per the internal arrangement made by Ms. Pushpanjali Milli. These payment through Ms. Pushpanjali Milli was necessary as Shri Karna Milli resides in Ramadhan village, Simen Chapori, Dhemaji District, Assam. It is submitted that mere existence of a financial transaction between the alleged accused person and Ms. Pushpanjali Milli does not constitute sufficient grounds for arrest of the alleged accused person U/S 373 of IPC R/w 6/8/12 of the POCSO Act and Section 3/4/5 & 6 of Immoral Trafficking Act; and the said sections do attract against the alleged accused person.

7. The further submission of the learned counsel for the petitioner is that since the alleged victims are under the safe custody of CWC, there is no possibility of the accused person tampering with the evidences or influence the witness if released on bail. Moreover, the alleged accused has fully cooperated with the investigation and in view of which, further custody is not required in the present case and therefore, prays for his release on bail. The accused is ready to abide by any terms and conditions to be imposed by this Court for his release on bail.

8. In support of his submission, learned counsel for the petitioner has relied upon the following decision of the Hon'ble Supreme Court and various High Courts:

(i) ***Prabir Purkayastha vs. State of (NCT of Delhi)*** reported in ***2024 SCC Online SC 934***, which discussed about the fundamental and the statutory right of the accused person to be informed about the ground of arrest in the writing.

(ii) ***Sanjay Chandra vs. Central Bureau of Investigation*** reported in ***(2012) 1 SCC 40,*** in which, the Hon'ble Supreme Court discussed about the object of bail to secure the appearance of the accused person at his trial by reasonable amount of bail and it also observed that the bail should not be denied after completion of the investigation and filing of the charge-sheet.

(iii) ***Shri Kajal Dey & Three Ors. vs. The State of Assam*** reported in ***1989 2 GLT 133***, where it is observed that on mere suspicion, police

must not arrest a person unless suspicion is well founded.

(iv) ***Satrughana @ Satrughana Parida vs. State of Orrisa*** reported in ***1995 Supp (4) SCC 448***, where the Hon'ble Court has discussed about not holding the identification parade promptly.

(v) ***Samsul Hoque vs. The State of Assam, (Bail Appln./250/2023)*** Where the alleged accused was released on bail in the offence involved with POCSO Act and Immoral Traffic Prevention Act, 1956, considering the period of detention of the petitioner under the custody for long.

9. While referring to the decision in the above referred cases, the learned counsel for the petitioner submits that in the instant case, no doubt serious accusation has been made, but not yet been convicted. He does not have any criminal antecedent. He is not a threat to society. Therefore, keeping the general principles of bail, that "*Bail is Rule, Jail is exception*" prays for grant of bail to the accused for ends of justice.

10. By an order dated 12.06.2024, the Case Diary was called for. However, in the meantime, during the pendency of this bail application, it was informed that the case has already been submitted into charge-sheet. Accordingly, the trial Court record was called for, the same is produced and I have perused the same.

11. The record reveals that the learned Special Judge, POCSO, Yupia has already taken cognizance of the offence on 16.07.2024 and the next date is

fixed on 16.09.2024 for production of the accused persons.

12. On perusal of the police papers, it is revealed that on recovery of the minor victims, they were examined and recorded their statement U/S 161 of Cr.P.C and also got recorded their statement U/S 164(5) of Cr.P.C. The record reveals that the victims were brought by the main accused with promised to engaged them in some other works like; to look after the children at home, to give job in parlor etc. but instead they were taken to different places and hotels and forced them to sleep with other men who then had committed forceful penetrative sexual assault on them. The statements further reveals that the victim could identify the perpetrators if they see them. Accordingly, a Test Identification Parade (TIP) was conducted in presence of the Judicial Magistrate, where the victims have identified the accused person to be the person who had committed alleged sexual offence against them.

13. On perusal of the above record it clearly reveals that the statement of the minor victim girls U/S 164(5) of Cr.P.C, corroborates with the statement given by them U/S 161 Cr.P.C and the contains of the FIR. And during the Test Identification Parade also the minor victim girls have identified all the arrested sexual assailant, not only that during the investigation, the victims also voluntarily led the police team and shown the pace of occurrences where the arrested accused persons had committed sexual assault on them.

14. The learned Additional Public Prosecutor submits that under the facts and

circumstances of the case, the accused person is not entitled to be enlarged on bail at this stage. She submits that the accused person is an influential man and there is every likelihood that the accused person might influence the material witnesses including the victims. Therefore, the learned Additional Public Prosecutor while objecting the grant of bail to the accused person submits that the accused should not be released on bail at least till the recording of the evidences of all the minor victim girls and material witnesses by the trial Court for fair trial of the case of such nature.

15. The learned Legal Aid Counsel appearing on behalf of the victim while objecting the grant of bail to the accused person at this stage has also supported the submission made by the learned Additional Public Prosecutor and submitted that the accused in the instant case is not entitled to any bail. She also submits that accused should not be released at least before the examination of the victim by the trial Court as there is every possibility that the victim being vulnerable group having hailed from the poor family might easily falls prey at the hands of the very influential accused person. Hence, prays for rejection of bail in the interest of justice.

16. Heard learned counsel for the parties and considered. Mere perusal of records-including the FIR, Statement of the victim recorded u/s 161 as well as 164(5) statements, identification of the accused persons by the victims in TIP, disclosure of the place of occurrences and leading to the visit of PO and the statements of the other material witnesses, prima facie there is a serious

allegation against the accused person and an incriminating material against the accused person for commission of the alleged offences. Considering the serious nature of allegations made against the alleged accused person and also considering that there is an incriminating material against him for commission of alleged offence against the minor victims, I find there is substances in the submission made by the learned Additional Public Prosecutor and the Legal Aid Counsel for the victims against the release of the accused person in the instance case at least till the recording of evidences of the minor victims by the trial Court.

17. In view of the above, I am not inclined to grant bail to the alleged accused person at this stage and accordingly, this bail application is rejected.

18. However, having regards to the provision under section 35 of the POCSO Act,2012 which provides for recording of evidence of child and disposal of case within a stipulated period of one year and considering the facts and circumstances of the present case, the learned trial Court is expected to expediate the trial of the case and shall make all endeavor to conclude the trial on time. To start with for speedy trial of the present case, the learned Special Judge, POCSO, Yupia may have to preponed the next date for production of accused person by fixing it during the month of August, 2024, preferably within the first fortnight instead of 16.09.2024. It is ordered accordingly.

In terms of above, this bail application stands disposed of.

JUDGE

Comparing Assistant